

REMARKS

Claims 1-28 are pending in the application, and claims 1-28 have been rejected. Reconsideration is requested.

Claims 1-15, 17-24 and 26-28 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Demarais (U.S. Pub. No. 2005/0192599). Applicant respectfully traverses the rejection. Examiner references the gastroplasty device shown in FIGS. 69 and 70 of Demarais to anticipate independent claims 1, 7 and 21. Although Demarais does claim priority to five separate provisional applications (60/544,074, 60/547,961, 60/552,400, 60/556,489, and 60/569,037), the subject matter shown in FIGS. 69 and 70 and described in Demarais is not supported by any of the five provisional applications, and therefore, the prior art date for Demarais with regard to FIGS. 69 and 70 is its filing date of February 11, 2005. Since the filing date of the current application is March 9, 2004, which is before to the prior art date of FIGS. 69 and 70 in Demarais, this reference is not prior art under 35 U.S.C. §102. Therefore, the rejection of claims 1-15, 17-24 and 26-28 under 35 U.S.C. § 102(e) should be withdrawn.

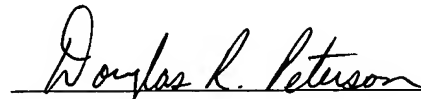
Claims 16 and 25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Demarais. Applicant respectfully traverses this rejection. As previously discussed, reference to FIGS. 69 and 70 of Demarais is not prior art to the claims of the current application, and therefore, the rejection under 35 U.S.C. § 103(a) to claims 16 and 25 should also be withdrawn.

Applicant has attempted to respond to each and every rejection set forth in the Office action. Claims 1-28 remain pending in the application and reconsideration is respectfully requested. The undersigned can be reached at (310) 824-5555 to facilitate prosecution of the application.

Respectfully submitted,

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